

TUESDAY, FEBRUARY 5, 2002

The Board met at its offices at 450 N Street, Sacramento, at 11:25 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX APPEAL – JEOPARDY ASSESSMENT HEARING

Koo & Hong Entertainment, Inc., 151478

12-31-96, \$94,658.00 Assessment

\$70,994.00 Penalty

12-31-97, \$62,954.00 Assessment

\$47,215.00 Penalty

12-31-98, \$75,532.00 Assessment

\$56,649.00 Penalty

Susie Young Byun, 145396

1996, \$42,043.00 Assessment

\$31,532.00 Penalty

1997, \$26,809.00 Assessment

\$20,107.00 Penalty

1998, \$37,104.00 Assessment

\$27,828.00 Penalty

Johnny Koo, 151533

1996, \$42,571.00 Assessment

\$31,928.00 Penalty

1997, \$25,798.00 Assessment

\$19,349.00 Penalty

1998, \$35,762.00 Assessment

\$26,822.00 Penalty

Susie Young Byun, Transferee for Corp. Koo & Hong Entertainment, Inc., 151525

12-31-96 to 12-31-98, \$116,572.00 Assessment

\$87,429.00 Penalty

Johnny Koo, Transferee for Corp. Koo & Hong Entertainment, Inc., 151512

12-31-96 to 12-31-98, \$116,572.00 Assessment

\$87,429.00 Penalty

For Appellant: Appearance Waived

For Franchise Tax Board: Neil Robertson, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the issuance of each of the jeopardy assessment notices (and demand) were reasonable under all relevant facts and circumstances, and that jeopardy exists.

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Whether each of the jeopardy assessment amounts is reasonable.

The effect, if any, of the "Judgment Pursuant to Stipulation" entered in the Los Angeles Superior Court on August 28, 2000, in the criminal case against the individual appellants.

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board sustained the action of the Franchise Tax Board.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

David L. Wiitala, 109486

1998, \$2,904.00 Assessment

\$726.00 Penalty, Late Filing

\$1,136.50 Penalty, Notice and Demand

For Appellant: David L. Wiitala

For Franchise Tax Board: Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellant is subject to California's income tax laws.
Whether respondent properly determined appellant's tax liability.
Whether appellant has brought a frivolous or groundless position before the Board.

Appellant's Exhibit: Letter (speaking notes), Misc. Income Tax Returns and forms
(Exhibit 2.1)

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Jon and Rita Minnis, 100638

1995, \$1.00 or more Assessment

1996, \$1.00 or more Assessment

Milpitas Materials Company, 104667

1995, \$1.00 or more Assessment

For Appellant: No Appearance

For Franchise Tax Board: Geoff Way, Tax Counsel

Action: The Board took no action.

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BUSINESS TAXES APPEALS HEARINGS

Drew L. Hyer and Mary De-Lane Hyer, 89000366970

1-1-94 to 12-31-97, \$6,733.44 Tax

For Petitioner: Paul Nelson, Representative

For Sales and Use Tax Department: Carla Caruso, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issue: Whether the transactions at issue qualify as exempt sales of fertilizer or exempt sales in interstate commerce.

Appellant's Exhibit: 1994-97 Listing of items to delete from Re-audit (Exhibit 2.2)

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to provide additional documentation, the Department 30 days to evaluate the documents, and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation.

FINAL ACTION ON APPEAL HEARD FEBRUARY 5, 2002

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, in the appeal of *David L. Wiitala, 109486*, the Board sustained the action of the Franchise Tax Board with concessions and imposed a \$2000 frivolous appeal penalty.

The Board recessed at 12:00 p.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Dr. Connell present.

PUBLIC HEARINGS**PROPERTY TAXES, STATE ASSESSEE PRESENTATIONS ON CAPITALIZATION RATES & OTHER FACTORS AFFECTING VALUES**

Mr. Peter Michaels, Cooper, White & Cooper, made a presentation to the Board for various state assessees.

BUSINESS TAXES APPEALS HEARINGS

Kenneth Michael Wolff, 89000966440, 89000966450, 89002070250

12-1-95 to 12-25-95, \$8,700.00 Tax

\$870.00 Penalty, Failure to File

\$870.00 Penalty, Failure to Timely Pay

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12-1-96 to 12-25-96, \$8,700.00 Tax
\$870.00 Penalty, Failure to File
\$870.00 Penalty, Failure to Timely Pay
12-1-97 to 12-25-97, \$8,700.00 Tax
\$400.00 Penalty, Failure to File
\$300.00 Penalty, Failure to Timely Pay
For Petitioner: No Appearance
For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
Action: The Board took no action.

Time Inc., 58320

10-1-95 to 9-30-98, \$442,761.82 Tax
For Petitioner: George S. Isaacson, Attorney
For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel
Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.
Issue: Whether merchandise, such as calculators, constitute taxable premiums, for which petitioner was required to collect use tax, or nontaxable gifts when offered to customers in connection with petitioner's magazine subscription sales.
Action: Upon motion of Dr. Connell, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Dr. Connell voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be granted.

Barnes & Noble.Com, 89872

1-15-99 to 3-31-00, \$1,128,721.89 Tax
\$00.00 Penalty
For Petitioner: George S. Isaacson, Attorney
Martin I. Eisenstein, Attorney
For Sales and Use Tax Department: David H. Levine, Counsel
Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.
Issues: Whether petitioner was a retailer engaged in business in California within the meaning of Revenue and Taxation Code section 6203(c)(2).
Whether petitioner's allegation that it did not distribute coupons in California during the first quarter 2000 warrants a reduction in the tax.
Whether the evidence warrants any adjustments to the measure of tax.

Dr. Connell left the Boardroom and Ms. Mandel entered on behalf of Dr. Connell in accordance with Government Code section 7.9.

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Action: Upon motion of Ms Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Fastener Hardware, Limited, 28883

4-1-90 to 6-30-98, \$120,545.62 Tax

\$00.00 Penalty, Failure to File

\$00.00 Penalty, Negligence

For Petitioner: Paul Nelson, Representative

For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issue: Whether petitioner is liable for the collection of the use tax from its California customers, and, if so, whether petitioner has shown that its customers paid the use tax on their purchases.

Appellant's Exhibit: Revenue and Taxation Code section 6511 and letter dated 12/4/01
(Exhibit 2.3)

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be submitted for decision.

The Board recessed at 3:15 p.m. and reconvened at 3:30 p.m. with Mr. Chiang, Mr. Parrish and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**Dee Baird, 60036**

1994, \$601.00 Assessment

\$150.25 Penalty, Late Filing

\$120.20 Penalty, Accuracy

1997, \$673.00 Assessment

\$168.25 Penalty, Late Filing

\$168.25 Penalty, Notice & Demand

For Appellant: No Appearance

For Franchise Tax Board: Mark McEvelly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellant's California income is subject to California's tax laws.
Whether appellant has maintained a frivolous or groundless position before this Board.

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Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board sustained the action of the Franchise Tax Board.

BUSINESS TAXES APPEALS HEARINGS

Peter A. Forster, 59272

7-1-95 to 6-30-98, \$5,120.51 Tax

\$512.05 Penalty, Negligence

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the measures of tax were established in accordance with the facts.

Whether relief from the 10 percent penalty for negligence is warranted.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

FINAL ACTION ON PETITION HEARD FEBRUARY 5, 2002

Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition of *Fastener Hardware, Limited, 28883*, be redetermined as recommended by the Appeals Section.

The Board deferred consideration of the petition of *Barnes & Noble.Com, 89872*, to the February 6, 2002 Board Meeting.

The Golden 1 Credit Union, 103814

10-1-97 to 12-31-00, \$ Unspecified Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Issue: Whether claimant is entitled to certain deductions of bad debts arising from direct loans.

Action: The Board took no action

The Board adjourned at 3:35 p. m.

The foregoing minutes are adopted by the Board on March 27, 2002.